



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
CIVIL WORKS  
108 ARMY PENTAGON  
WASHINGTON DC 20310-0108

JUN 14 2007

MEMORANDUM FOR THE DIRECTOR OF CIVIL WORKS

SUBJECT: Regulatory Program *Efficiency Concepts* 2007

Thank you for your May 23, 2007, memorandum (enclosed) providing me with 19 Regulatory Program *Efficiency Concepts* developed by our respective staff. These concepts are based on several years of experience monitoring performance, identifying inconsistent/consistent practices, reacting to court decisions, and soliciting the views of both Corps Regulators and those that are regulated. I want to thank you and the Army Corps of Engineers Regulatory staff, nationwide, for their dedication, hard work, and public service. The program pace is fast, workloads are heavy, and interaction with permit applicants, consultants, and review agencies constant and sometimes controversial. Despite these and other challenges Corps Regulators continue to respond to our Nation's call to authorize economic development and property improvement projects while protecting the aquatic environment.

I appreciate your willingness to provide this guidance to all Divisions and Districts for immediate implementation and periodic reporting and I endorse the concepts fully. I have been informed that some offices are already implementing some or all of the concepts. Other offices can self-assess and begin to implement the concepts. Working together, and with our eye on our vision for providing quality service, I am confident that the Regulatory Program will continue to accomplish mission objectives.

A handwritten signature in black ink, reading "John Paul Woodley, Jr.", is positioned above the printed name.

John Paul Woodley, Jr.  
Assistant Secretary of the Army  
(Civil Works)

Enclosure



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS  
441 G STREET NW  
WASHINGTON, D.C. 20314-1000

MAY 23 2007

CECW-CO

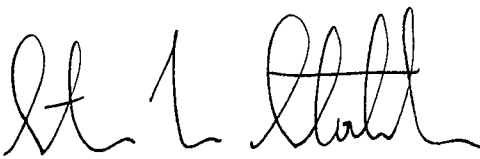
MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY FOR CIVIL WORKS

SUBJECT: Regulatory Program Efficiencies Memorandum

1. The Army Civil Works Regulatory Program affects over \$200 billion of economic development, annually, while concurrently meeting statutory requirements to protect the Nation's aquatic environment. Regulators provide over 100,000 written authorizations and perform over 110,000 jurisdictional determinations yearly. The continued successful execution of the program is vital to the Nation's economy and critically important to the viability of our natural resources.
2. However, the Regulatory Program is dynamic. Recent challenges, including the preparation of guidance to address the Supreme Court's decision on jurisdiction in the *Rapanos* case, evaluating the impacts of a recent court decision invalidating aspects of the Army-EPA Excavation Rule (Tulloch), reacting to court decisions overturning surface coal mining authorizations, completing a congressionally mandated mitigation rule, and revising the program's procedures for historic properties have increased operating and management uncertainty and have resulted in inconsistencies across all levels of the program. In this uncertain climate, it remains imperative that the Regulatory Program continue to self-evaluate and monitor performance in order to efficiently manage the program and to ensure that we satisfy our long-standing public service objectives. To that end, I endorse the enclosed Regulatory Program Efficiencies and encourage their full application. In order to accomplish this, CECW-OR will circulate the Regulatory Program Efficiencies to all Divisions and Districts for implementation and will require periodic reporting.
3. Thank you for your continued support. If you have questions, you may contact Katherine Trott at (202) 761-4229.

FOR THE COMMANDER:

2 Encls

for   
Don T. Riley  
Major General, USA  
Director of Civil Works



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APR 13 2007

MEMORANDUM FOR THE DIRECTOR OF CIVIL WORKS

SUBJECT: Regulatory Program Efficiencies

The successful execution of the Army Civil Works Regulatory Program continues to be a high priority for this office and will remain so throughout my tenure as Assistant Secretary. I appreciate your continuing support as we work together to make this highly visible and challenging program as effective and efficient as possible, given the sometimes uncertain and changing regulatory climate in which we work. Recent challenges, most not of our making, have increased operating and management uncertainty and inconsistency at all levels of the program. These challenges include operating under Continuing Resolution Authority, developing interagency guidance in response to the Supreme Court decision in the Rapanos case, evaluating the impacts of a recent court decision invalidating aspects of the Army-EPA Excavation Rule (Tulloch), reacting to court decisions invalidating surface coal mining authorizations, and completing a congressionally-mandated mitigation rule. Lastly, but also important, my staff are working with your staff to update and revise Appendix C to 33 CFR 325, the 1990-vintage guidance for complying with the National Historic Preservation Act, as amended. Program change is inevitable.

Our approximately 1,200 regulators provide over 110,000 written authorizations annually and make in excess of 100,000 jurisdictional determinations. The Regulatory Program affects over \$200 billion of economic development, annually, while concurrently meeting statutory requirements to protect the Nation's aquatic environment. Additionally, your staff process 600 enforcement and 60 appeals cases each year. Given this workload and the uncertain regulatory climate, it is critical that we continue to self-evaluate and monitor performance, not simply for our own management purposes, but to ensure that we continue to meet long-established public service objectives (encl. 1). In that regard, please ask your staff to review the concepts at enclosure 2 and provide me with an efficiency memorandum we can endorse to the field.

Thank you for your support. Your staff may contact Mr. Chip Smith, Assistant for Environment, Tribal and Regulatory Affairs, at (703) 693-3655 if there are any questions.

John Paul Woodley, Jr.  
Assistant Secretary of the Army  
(Civil Works)

## **Regulatory Program Public Service Commitment**

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**May 2007**

PUBLIC SERVICE IS A PUBLIC TRUST. WE, AS U.S. ARMY CORPS OF ENGINEERS REGULATORS, MUST EARN THIS TRUST, AND TO KEEP THIS TRUST, WE MUST CONDUCT OURSELVES IN A MANNER THAT REFLECTS THE FOLLOWING PRINCIPLES:

**PROFESSIONAL** – We will conduct ourselves in a professional manner in dealings with all of our customers, including applicants, agencies, stakeholders, interest groups, Tribal Governments and the general public.

**FAIR AND REASONABLE** – We will be open-minded, impartial, and consistent in our interactions with all of our customers to ensure that all actions and decisions are free from bias, and are not arbitrary or capricious. Customers will be treated equally and with respect.

**KNOWLEDGABLE** – We will remain knowledgeable of applicable laws, regulations, and scientific and technical advances which affect our program.

**HONEST** – We will be truthful, straightforward, transparent, and candid in all dealings with our customers.

**TIMELY** – We will strive to provide our customers with timely responses regardless of whether those responses are favorable or adverse.

**ACCOUNTABLE** – We will be decisive in all actions and accept responsibility for any of our decisions and consequences. All decisions will be factual and properly documented.

**RESPECTFUL** – We will treat our customers with dignity, courtesy, compassion, and sensitivity.

## **Enclosure 2**

### **Efficiency Concepts**

#### **Policy Efficiencies**

- Provide clear, timely policy guidance
- Represent, explain, and defend the Regulatory Program at agency HQ levels and with Congress
- Work to request and justify Regulatory Program funds. Provide resolution services and guidance, then power down to Districts

#### **Program Efficiencies**

- Make office-desk jurisdictional determinations whenever possible
- Limit the number of field JDs. Field JDs should rarely require more than one site visit (document reasons if multiple visits are necessary)
- Make full use of all applicable Nationwide and Regional General Permits. Use the 45-day clock where applicable to make timely decisions
- Use an experienced specialist for projects such as Interagency Review Team Lead when developing mitigation banks
- Publish JD requirements on district websites to minimize the need to request additional information
- Insure that the level of analysis for all permit actions is commensurate with the level of direct impacts. Don't make perfection the enemy of good. Limit Office of Counsel review to those actions with significant litigation risk
- Allow applicants/consultants to provide electronic drafts of public notices and Environmental Assessments for Individual Permits. Insure that any document provided by the applicant/consultant is reviewed and edited to meet Corps Regulatory decision standards before it is finalized.
- Continue Enforcement and Compliance efforts during these challenging times. Concentrate on the most egregious cases and coordinate closely with USEPA for enforcement
- Maximize signature authority delegation to field offices, if applicable
- Explore use of WRDA 2000 Section 214 and TEA-21 authorities
- Explore Tribes and states assuming responsibility for aspects of the 404 program (SPGPs)
- Co-locate Regulatory staff with USEPA, USFWS, NRCS, etc.

## **Public Service Requirements**

- Return all phone messages within two working days (document in project file)
- Make arrangements to either forward calls or answer phone calls when out of the office
- Respond to all correspondence within 14 days, or document why 14-day turn around could not be achieved
- Provide rationale for permit decisions and policies to applicants and other interested parties upon request